

Barnes

SANDRA D. BARNES

was called as a witness by and on behalf of the Respondent and, after having been duly sworn, was examined and testified as follows:)

JUDGE PEARSON: Give us your full name, please.

THE WITNESS: Sandra Denise Barnes.

JUDGE PEARSON: B-a-r-n-e-s?

THE WITNESS: Yes, sir.

JUDGE PEARSON: Okay, go right ahead.

DIRECT EXAMINATION

Q. BY MR. BAUCH: Thank you.

Ms. Barnes, what is your position?

A. Special agent.

Q. And what entity are you a special agent for?

A. Department of Justice, office of the inspector general.

Q. And rather than get into a long history on this, how is it you came to conduct an investigation in 2012 of Kimberly Nichols?

A. I received the case assignment from my boss, Assistant Special Agent in Charge Carlos Capano.

Q. And what did you do when you received that case assignment? What did you do regarding your communication with the institution?

A. Well, initially, I looked through the allegation and kind of formulated an investigative strategy or plan. And then I communicate with the FCC or the FCI on the inmates I need to see to make sure they're still there; they hadn't been transferred; and to get any employee's work schedules, because I have to plan a

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trip because I'm in Houston. So for logistical purposes, I need to find out when the best time for me to come would be.

Q. And who do you communicate with when you do that?

A. Usually the employees in the SIA/SIS shop.

Q. And we're talking about some employees in the SIS/SIA shop at FCC Pollock; is that correct?

A. Yes, or the FCI. Yes.

Q. So there are several institutions that comprise FCC Pollock.

A. Yes.

Q. Okay. Wait until I finish the question. I know you're anticipating, but you're good to wait.

And then when -- I'm not asking to identify the person, but did you interview the subject of the investigation for us, or did you do other interviews first?

A. Other interviews.

Q. And these would have been other relevant or pertinent witnesses to the case?

A. Yes.

Q. And then do you remember when you first interviewed Kimberly Nichols?

A. Yes.

Q. Do you remember the date?

A. I believe it was January 24th of 2012.

Q. Can you tell me how you arrived to FCC Pollock. Did you drive yourself there?

A. Yes.

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Q. And where did you go.

A. I don't recall if we went into the USP first, because I always have multiple cases, usually at Pollock. So I'm doing various cases at the same time. So I don't know if I went to USP or FCI first, but I recall interviewing Ms. Nichols at the FCI. So at some point I drove over to the FCI and went in that facility.

Q. Was anyone else with you?

A. Yes.

Q. Who was that?

A. Senior Special Agent Douglas Bruce.

Q. Did he accompany you to the FCI?

A. Yes.

Q. And when you parked your car in the parking lot at the FCI, what did you do next?

A. When we go into the institution, we sign in the official visitor log and we ask for the keys to lock our weapons up, and our cell phones, depending on if we're going to go to visit an inmate or stay up in the front. We asked the front desk employee to contact someone in SIS to escort us where we need to go.

Q. Okay. And on January 24th, 2012, assuming that's the right date in my question, the day that you came to interview Kimberly Nichols, who from SIS came up to escort you?

A. I believe it was Joe Ripka.

Q. And what happened after Joe Ripka met you in the front lobby; what happened next?

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A. We followed him down a corridor towards his office location, and we sat in an office across from his. He knew I was there to interview Ms. Nichols; I had coordinated that with him, given him the days of the people I needed to see. And he would say he would be back, and he left.

Q. When you said you coordinated that with him, did you do that by phone or by e-mail?

A. I know I sent some e-mails asking what Ms. Nichols work schedule was so I could plan my trip, and giving him the days that I would be there. And I have no recollection if I talked to him on the telephone about her specifically.

Q. So you got set up in a room that -- was it in the SIS/SI area over at --

A. Yes.

Q. -- at the FCI.

A. Yes.

Q. And it was an empty room, a conference room?

A. It was an office. I am not aware -- it was someone's office. It was unoccupied but there was a desk and chairs as it was an office space with a computer. I'm not sure it was an employee's office.

Q. Okay. And then how is it that Ms. Nichols came to be in your area to be interviewed?

A. After he left -- he said he'd be back a short time later -- he opened the door, she walked in, and he closed the door behind him and he walked off.

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Q. Okay. What was first spoken by Ms. Nichols when she walked in the door?

A. She said, What's going on? I believe.

Q. And then she sat down, or did she say that after she sat down?

A. I don't recall if she said that. The standing up or sitting down, I remember the door was closed, but I don't recall if she was standing up or sitting down.

Q. And then how did your interview proceed from there?

A. I introduced myself and Senior Special Agent Bruce, and we showed her our credentials, and we told her we -- you know, basically, I couldn't give you verbatim -- but we told her we were conducting investigations. There had been some allegations against her and that we would like to discuss those things with her and then we give her our advisory form.

Q. When you say an advisory form, is that the Warning and Assurances form?

A. There's two different ones, so I'd have to see what you're referring to exactly.

Q. Okay. Let's see if I got the right one.

Take a look in your packet. There should be an Exhibit 16, and I believe this one is found on page 26 of 16. So it may say 16-26, in the lower right corner -- is that where you guys numbered? Okay.

JUDGE PEARSON: Now, just for anybody else's benefit who may be reading this record later, we've got two official copies of

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these documents, and when we were numbering these pages, we ended up with two different numbering systems. So for Exhibit 16, one of the copies has the exhibit going from page 1 to page 40; the other one has it going from page 1 to page 39. So depending on which copy you're reading, it may be one page off.

But the page -- or the document that the witness has in front of her only goes up to page 39, and you're asking her to look at page?

MR. BAUCH: 26 of Exhibit 16.

JUDGE PEARSON: 26, okay, which is going to be 27 on my copy, but go ahead.

Q. BY MR. BAUCH: Okay. At the top of this form, what's the title of this form?

A. *Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis.*

Q. And is this the advisory form that you indicated you presented to Ms. Nichols?

A. Yes.

Q. And does it describe what the investigation pertains to? Did you read this form to her or did you allow her to read it herself? How did you conduct that interview.

A. I put the form in front of her. I handwrote in the allegations, and always bring their attention to the allegations and that this is a voluntary interview. And as they read it, they may have questions and may not; I just don't recall her having any questions.

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Q. Okay. Did she ask you anything about this form?

A. No.

Q. Did you sign this form?

A. Yes.

Q. Where is your signature?

A. Top line on the left, where it says "Special Agent."

Q. Okay.

JUDGE PEARSON: Top line or bottom.

THE WITNESS: Well, on the signatures, at the bottom of the page, that top line on the left.

JUDGE PEARSON: Okay, got it. Yes.

THE WITNESS: Yes, sir, that's my signature.

Q. BY MR. BAUCH: So where it says "Office of Inspector General Special Agent," that's your signature?

A. Yes.

Q. And below that there's a witness line, and is that Mr. Bruce's signature?

A. Yes.

Q. And on the right hand side across from your signature, it says "Employee's Signature." Whose signature is on that form?

A. Kimberly Nichols.

Q. And did she sign that in your presence?

A. Yes.

Q. And the date of this interview was what date?

A. January 24th, 2012.

Q. Now, this investigation pertains to contraband, smuggling.

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What in your knowledge as you think of today, what kind of contraband was of concern to be smuggled in by Ms. Nichols?

A. Tobacco, an iPod, and that's all I can recall right now.

Q. Okay. Bribery. What kind of background information caused you to say that bribery is involved?

A. An inmate alleged that they had paid her cash to smuggle in those contraband items.

Q. Okay. Sexual assault. How does sexual assault appear in a prison setting?

A. An inmate alleged that they had sexual encounters with Ms. Nichols.

Q. And if it's an inmate and Ms. Nichols is an employee at the Bureau of Prisons, is there something about that? I don't understand.

A. An inmate is considered a ward of the State, or a ward of the government and, therefore, they are the victim of our investigations on sexual natures.

Q. And then other employee misconduct, do you recall what other elements of her case?

A. Possibly failure to report when contraband came through the mail room. I wasn't sure if she had reported that in a timely manner or not.

Q. And in any event, she signed this form, correct?

A. She did.

Q. When during this interview, did she request union representation?

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A. She didn't.

Q. Did she ever utter the word "union" to you during a conversation?

A. No.

Q. Did she ever say, "I want a representative" or words to that effect?

A. No.

Q. Did she look at you at any time or whether it was in your direction or in the direction of Agent Bruce and say, Do I need a union rep, or words to that effect?

A. No.

Q. Now, during the course of this interview, I believe you got to the point where you asked her about a cell phone; is that correct?

A. Yes.

Q. And then what was it you asked her regarding a cell phone. What did you want from her?

A. The inmate alleged they had multiple phone conversations, and she volunteered to give us her phone to search her phone.

Q. So then what did she do?

A. Well, I told her we have a consent form, if she was willing to allow us to search; she had no problem. She was trying to give me the keys to her house to go search her house if I wanted to, as she was denying the allegations. She said she would go out to her car to get her phone. At that point, we were typing the affidavit for her to sign; she left for approximately 15 minutes and

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retrieved her cell phone from wherever she had it at the -- I don't know.

Q. You mentioned a consent form. Did she sign the consent form before she went out to her car, or after she came back?

A. I can't recall.

Q. Did you have her sign the consent form before you took possession of her cell phone?

A. I had the cell phone in my hand because I had to write the serial numbers of the phone on here, and then she initialed off. So I actually had -- the cell phone was on the table and we were both looking at it.

Q. Okay. And you seem to be looking at a different page in the exhibit stack in front of you. What page are you on?

A. 16-30, the consent to search computer, electronic equipment.

Q. And I understand from the Judge's earlier statement that this may appear as 16-31 in his copy.

Sure he's at that page.

JUDGE PEARSON: Oh, go ahead.

MR. BAUCH: Good.

Q. BY MR. BAUCH: All right. And when Ms. Nichols came back in to the room after retrieving her cell phone, did she request union representation from you?

A. No.

Q. Did she request any kind of representation during that time?

A. No.

Q. Did she request permission to speak with the union

representative?

A. No.

Q. She gave you no communication whatsoever that she wanted to speak or have a union representative present; is that correct?

A. Correct.

Q. And you've filled out this form and then she signed it, and then she initialed by each of these entries at the bottom; although the initials don't appear very clearly on this.

Is that correct?

A. Correct.

Q. What did you do with that cell phone?

A. Seized it and put it into -- or took possession and put it into evidence.

Q. You didn't give it to the SIA before you left?

A. No.

Q. So to your evidence locker?

A. Yes.

Q. At what point in the investigatory interview did you ask her to review and sign the affidavit?

A. After we filled this consent -- well, I can't tell you if it was before or after this form. But at some point I printed the affidavit out for her to review. They review it; they read it, tell me if I made a typo, grammatical error; if they want to change anything; and I make any corrections they request and I -- right in front of them. We go over it and then I print out a new copy; or if the one I originally printed out had no corrections,

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we go through the process of having them sign it and swearing them to it.

Q. Now in your answer you say "they." Was there more than Ms. Nichols in the room?

A. No, I'm just referring to "they," the employee.

Q. So in the case of Ms. Nichols, do you remember if, on your January 24, 2012 interview date, do you remember if she wanted to make any corrections, to the best of your recollection, any corrections to the affidavit?

A. I can't recall if she made any specific corrections to this affidavit.

Q. And in the exhibit packet in front of you, on page 16-27 through 16-29, we have a three-page affidavit. Can you tell me if that the affidavit that you're talking about that she signed after you typed it out and presented it to her?

A. Yes.

Q. And, yes, that's a yes, this is the document?

A. It is the affidavit. Yes.

MR. BAUCH: And, Judge, of course, that would be --

JUDGE PEARSON: Don't worry about it. I can keep track. I don't want to confuse the record any more than necessary.

Q. BY MR. BAUCH: And this is a different style of affidavit than I typically see in a Bureau of Prisons case. You have sort of -- on the first page you have some, numbers 1 through 17 basically give some general information about who's present and who's going to be signing and what not; is that correct?

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A. Yes.

Q. And then on 18, you have a statement, and do you read this to the subject of the interview that's going to sign this affidavit?

A. No, they read it.

Q. So they're reading this to themselves.

A. Yes.

Q. It says: I, Kimberly Y. Nichols, hereby solemnly -- and then she circles "swear" that she's going to tell the truth and nothing but the truth. And then you go through all these various paragraphs where you address different topics. She's denying any sexual contact with the inmate or any other inmate.

And on the second page at the top, there's a subheading for contraband and she's saying that she never did any of that. And then you have another subheading for package, and you go through this couple paragraph, describing this package that allegedly was sent to her by an inmate family member. Is that correct?

A. Correct.

Q. And then at the end of it she's saying all that's true, and she has affixed her signature on the last page, on Exhibit 16, page 16-29. Is that right?

A. Yes.

Q. And she swore to you that that was the truth?

A. Yes.

Q. What happened next after she signed the affidavit. What happened next?

A. She left.

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Q. She left, okay.

A. Uh-huh.

Q. At any time while she was reading over the affidavit, did she request any union representation during that time?

A. No.

Q. Did she say, I'd like to have a representative or someone else read this?

A. No.

Q. She took the time to read through it and sign it?

A. Yes.

Q. And she signed it in your presence?

A. Yes.

Q. She left. What did you do next?

A. Packed up my computer and all my documents and stepped out in the hall, and I don't recall if Joe Ripka was the one there, or someone else in SIS, to escort us back out to the front for us to retrieve our weapons.

Q. What kind of a debriefing did you conduct with Joe Ripka or whoever else was present from the SIS shop at the conclusion of the interview?

A. I don't recall discussing it with anyone, whoever escorted us out. I don't recall.

Q. You don't recall or you don't recall as in you don't remember, or did you give a briefing of any kind to anybody?

A. I don't remember giving a briefing to anyone.

Q. Would you have given a briefing?

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A. It depends.

Q. Okay.

JUDGE PEARSON: Depends on what?

THE WITNESS: Well, if it is a safety or security issue at the institution, we'll let the warden know. The inmate said this CO is having sex with them. So they can take whatever action they need to take. Or an inmate says these three inmates have weapons, we would go brief that so they can take appropriate action.

So in a situation like that, depending on what someone tells us that needs to be addressed immediately, we would notify the warden or the SIA.

JUDGE PEARSON: What about if Ms. Nichols had identified a couple of other employees or inmates who had information relevant to the allegations against her. Would you go to the SIA and say we're going to need to talk to Inmate Jones and Inmate Smith and Officer Johnson?

THE WITNESS: We would tell them we need to talk to those people because they would have to escort us to go talk to those people.

JUDGE PEARSON: Would you normally do that at the site of the interview or shortly after the interview or would you do it a day or a week later in writing, like send an e-mail or a phone call to the SIA saying, We're going to need to talk to these people?

THE WITNESS: It depends. If we are on the last day of our travel authorization and we're leaving, we wouldn't even say anything because we wouldn't have time to do that. It may be at a

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later time. Or if I needed to review subpoenaed documents or some other type of evidence before doing those interviews, compare whatever it is I may be looking at.

So not necessarily it would happen right then, but if --

JUDGE PEARSON: But it could also happen on the side?

THE WITNESS: -- it could happen, if I had time to interview those inmates. I would say I need to go see Inmate so-and-so and so-and-so, and they would have to escort me back to where the inmates are so I could do those.

JUDGE PEARSON: Okay.

Q. BY MR. BAUCH: So you would do the inmate interviews back inside the secure portion of the prison?

A. Yes.

Q. And employee interviews, do you go back into the prison to interview employees or do you ask that they be brought out to see you?

A. Either/or.

Q. And in Ms. Nichols case, in this affidavit, did you see anything of a security nature that would warrant you to contact the warden or the SIA to give them some type of notification?

A. No. The inmate was already in the SHU, so the inmate was -- the special housing unit. So the inmate was already separated, so to speak, from the general population. But I don't recall talking to the warden about what she said; I don't recall.

Q. After this meeting, was this the last interview you had -- the first and last interview you had with Ms. Nichols?

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A. It was the first interview I had with Ms. Nichols, but it wasn't the last interview.

Q. Okay. What was the last interview, or what was the next time you spoke and obtained an affidavit from Ms. Nichols. When did that occur?

A. Well, in that first interview she agreed to take a polygraph. So I told we would -- our polygrapher is in Denver; I would have to coordinate logistics with him, the only way he could come to administer that exam. And I told her as soon as I had a good day, I would let the SIA know so they could tell her what day and make sure it worked for her schedule. And the polygrapher flew in; we drove up there; and that's the second time that we tried to talk to her.

Q. Do you remember when that meeting took place?

A. Approximately a month after that; it was February 20-something; 23rd, maybe, I believe.

Q. All right. And what occurred during that meeting?

A. Brian Richmond walked in and said she refused to take a polygraph.

Q. Do you know who Brian Richmond was?

A. The union representative.

Q. How did you know he was the union representative?

A. From previous dealings with him.

Q. And previous involving the Kimberly Nichols, or previous in other cases?

A. Other cases.

Barnes

Q. So then did you end your trip and leave the institution at that time?

A. No, we told him that the employee has to tell us that she doesn't want to take it, and then Ms. Nichols reiterated she didn't want to take the polygraph, so the polygrapher packed his things up and went off.

Q. Did you ever come back to the institution regarding Kimberly Nichols again?

A. Yes.

Q. When was that?

A. In April, 2012.

Q. And what happened --

JUDGE PEARSON: Before you do that, the meeting in February --

THE WITNESS: Yes, sir.

JUDGE PEARSON: -- where you were going to have the polygraph test administered, where the polygraph examiner came out from Denver to Pollock and basically turned around and went home.

THE WITNESS: Yes, sir.

JUDGE PEARSON: I'm sorry, go ahead.

MR. BAUCH: That's all right.

Q. BY MR. BAUCH: So what transpired for the April investigatory interview?

A. On that day, union representatives Brian Richmond and Logan -
- I think it's Richard Logan -- can't recall his first name --
came in with Ms. Nichols for the interview.

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Q. And where was this interview being conducted?

A. This was being conducted at the USP -- near the warden's office, in that section up there.

Q. So did Ms. Nichols arrive for that escorted by a staff member, or did Ms. Nichols arrive in conjunction with her union representatives?

A. In conjunction with the union representatives.

Q. How did the meeting proceed from that point?

A. They came in; they sat down. She already was familiar with who we were from the previous interviews; and we gave her another advisory warning. And we gave Mr. Logan and Mr. Richmond the union advisory form.

Q. Now, the advisory warning that you gave to Ms. Nichols, was it different than the first one or was it exactly the same form?

A. It was different.

Q. And I am looking at -- see if I can find it. Take a look at Exhibit 16; I believe it's page 34.

A. Okay.

Q. What's the title -- I know it says *United States Department of Justice, Office of Inspector General*. What's the subtitle after that say?

A. *Warnings and Assurances to Employee Required to Provide Information*.

Q. So you're not conducting a voluntary interview at this stage, are you?

A. No.

Barnes

Q. And this is-- what's the term for what you're calling this type of interview?

A. This is a compelled interview.

Q. She's going to be required to give you information; is that correct?

A. Correct.

Q. And this writing on this page where it says: This investigation pertains to -- and then I see: sexual relationship, inappropriate relationship, inmate contraband, smuggling, bribery and employee misconduct.

Is that your writing on that document?

A. Yes.

Q. When you gave her this form, did she read it? Did she ask you any questions on it?

A. She read it; I don't recall if she asked me any questions on it.

Q. And the signature lines appear similar to what the other one had. Is that your signature on the upper left of the first signature line?

A. Yes.

Q. And then on the rights it says "Employee Signature." Is that Kimberly Nichols' signature?

A. Yes.

Q. And then the date is April 26, 2012. Is that correct?

A. Yes.

Q. And this witness is at, once again, Douglas Bruce signing?

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A. Yes.

Q. And nowhere on this form do you have the union representative side; is that right?

A. No. They sign a different form.

Q. They sign different.

So if we turn the page in Exhibit 16 to page 35, what's this document?

A. This is the advisory to the union representatives. And Mr. Logan and Mr. Richmond each got one that day.

Q. So I see a certification line down at the bottom. Did they sign the same form or individual forms?

A. Individual forms.

Q. And this particular one is on page 35, is for which employee?

A. Richard Logan.

Q. And if we turn to page 36, which form -- who signed for this form?

A. Brian Richmond.

Q. And they both signed in your presence on April 26, 2012; is that right?

A. Yes.

Q. Then what happened.

A. Then we proceeded into the interview to ask her questions.

Q. And at the end of the interview did you produce another affidavit?

A. Yes.

Q. And is this the affidavit from that April 26th meeting, 2012,

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is this the affidavit that appears on pages 37, 38 and 39?

A. Yes.

Q. And I see very similar format, you have kind of a box at the top of the first page, and it has information about the subject; has your name and Douglas Bruce on there. Then I see that there's an introduction paragraph and kind of gives a very brief synopsis of what's occurring during the meeting; and then you have a denials paragraph on that first page, and it kind of briefly goes through that she's denying sexual contact with Inmate Tillery and any other inmate.

And we've got a second page, which is 16-38. We have a contraband paragraph and a package paragraph, and then the end of her statement. She's initialed off on that last paragraph, end of statement. Is that correct?

A. Yes.

Q. And then we have the signature page, and she says that she subscribed and sworn to -- sworn to is circled -- and then are those her initials under "sworn to"?

A. Yes.

Q. And then she signs it, and this is the truth.

A. Yes.

Q. Then what happened.

A. Then they left.

Q. And what happened after they left? What did you do?

A. I packed up my stuff and went home.

Q. At what point did you -- when you returned back to your

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office in Houston, did you take some period of time and compile your investigation report?

A. Yes.

Q. And do you just write that up and send it to headquarters? What's your process for those reports?

A. I draft it up and then send it to my supervisor for review.

Q. And your supervisor is Mr. Cap --

A. Capano.

Q. Capano?

A. Yes.

Q. And then does he then -- if he has revisions he wants you to address, he sends it back to you for that?

A. Yes.

Q. Did he make any revisions that you recall in this report?

A. He always makes revisions.

Q. Okay, he's one of those bosses. Okay.

After those revisions are made, what happens to your report?

A. Once we go back and forth on grammatical revisions, then there is a tracking database; it's an electronic way to keep track of documents. I submit it in there to him once again.

JUDGE PEARSON: The report that you drafted up, did you draft that with Mr. Bruce, or on your own?

THE WITNESS: No, sir, I drafted it on my own.

JUDGE PEARSON: He wasn't involved in summarizing and reporting?

THE WITNESS: No, sir. Since I was the case agent, I'm

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responsible for doing the entire report.

JUDGE PEARSON: Oh, okay. So you were the primary person?

THE WITNESS: Yes, sir.

JUDGE PEARSON: He was mostly there just to accompany you to the interview?

THE WITNESS: Yes, sir.

JUDGE PEARSON: I see. Okay.

Q. BY MR. BAUCH: And then at some point is the report transmitted to your headquarters?

A. Yes.

Q. And do you know what happens to the report after that?

A. It gets revised, grammatically, errors. There's a process that it goes through. And then eventually it makes its way over to the BOP.

Q. And is it headquarters in office of inspector general, your Department of Justice office of inspector general headquarters office that's responsible for transmitting that to BOP?

A. Yes.

Q. After you submit it to headquarters and make whatever revisions they want, you don't have any further involvement unless the case is going to prosecution?

A. Correct.

Q. And you didn't find any criminal misconduct in this case; is that correct?

A. It was opened criminally, but it was not prosecuted, no.

Q. Did you make any referral for criminal prosecution?

Barnes

A. No, there was no evidence to support that.

Q. And did you say anywhere in your report that you expected some disciplinary action be taken against the employee?

A. No.

Q. Do you ever make recommendations for disciplinary action against the employee?

A. No.

Q. Now, tell me about your communications with -- since this was your investigation, tell me about your communications and the extent of your communications with your liaison staff at FCC Pollock.

A. Communication is basically scheduling, logistical arrangements. I don't have access to BOP databases. I can't see a correctional officer's work schedule or where they work. So because I have to have travel authorization and make travel arrangements, I always try to coordinate with them, make sure the inmate didn't get shipped off the day before I'm supposed to be there to interview an inmate. So the communication is primarily logistical arrangements for my cases I need to do out there.

Q. And do you make sure that there's a location in which you can conduct interviews in a confidential manner?

A. Yes.

Q. Other agencies conduct investigations at FCC Pollock also, don't they?

A. Yes, I've conducted interviews all over the institution.

Q. But you can encounter and FBI agent, you can encounter --

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A. Yes.

Q. -- somebody from another investigatory agency.

A. Yes.

Q. So there may be just more than just office of inspector general coming in to conduct an investigation.

A. Usually the FBI is there almost every time I'm there, so yes.

Q. So they're a frequent house guest.

A. Yes.

Q. Okay.

JUDGE PEARSON: But they weren't in this case, were they?

THE WITNESS: I don't know what their schedule is, but a lot of times I know they're there because they have their own parking spot so I know her car. So I know she's there when I'm there, but we don't really cross paths.

JUDGE PEARSON: But there was no FBI agent --

THE WITNESS: Involved on this case?

JUDGE PEARSON: -- that was involved in your --

THE WITNESS: No, sir. No, sir.

Q. BY MR. BAUCH: They're doing their own --

A. Their own cases.

Q. -- thing, their own investigations, and the SIS shop coordinates with them as well?

A. Yes.

Q. They provide the rooms and they have to escort them. If the FBI is coming in to interview an inmate, they're escorted back by somebody from the SIS shop also, correct?

Barnes

A. That I'm aware of, yes.

Q. Yes.

JUDGE PEARSON: But aren't there also organized crime task forces where FBI and other agencies might be involved in the investigation or counterterrorism? Can't they be involved with you on those sort of cases?

THE WITNESS: Well ---

JUDGE PEARSON: I'm not saying in this particular Nichols case, but in other types of cases.

THE WITNESS: Right. We can run a case with another agency depending on what the crime is or what the allegation is, but we don't have a task -- we're not part of a task force at all.

Q. BY MR. BAUCH: So other than these logistics, logistical things like the inmate's assignment, whether they're at FCC Pollock or have been relocated to another federal prison elsewhere, and the days off for the employee or employees you want to interview. But other than those kinds of things, what type of conversations or communications do you have with the SIS, or the SIA, or the warden regarding the status and ongoing progress of her case?

A. It's very limited. It's what I said before. If there's a security issue or a safety issue, then I would let them know.

Q. In this case, since it was just the Kimberly Nichols case, there weren't any of those safety issues, were there?

A. No, not that I thought.

Q. You knew that the inmate who was the subject of -- who

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accused Nichols of all this wrongdoing was locked up in the special housing unit?

A. Yes.

Q. But there were other inmates who were cooperative in this investigation; is that correct?

A. Yes.

Q. And those were inmates that weren't locked up in the special housing unit; is that correct?

A. Correct.

Q. Did you give any kind of a -- and if you don't understand the terminology, I'll try to re-clarify. Did you give any type of a substantive briefing to any Bureau of Prisons official before you ended your investigation?

A. Not that I can recall.

Q. "Not that I can recall" makes me think that you must do it at some time. Do you ever give a substantive briefing of the ongoing progress of your investigation to a BOP official?

A. I have.

Q. And who would that have been?

A. There was a case where the warden wanted to know what the correctional officers admitted to, subsequent to their interviews, and I recall letting the warden know that the officers confessed to certain allegations.

Q. Was that at FCC Pollock?

A. Yes.

Q. Was it -- did you discuss -- was that in any way related to

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the Nichols investigation?

A. No.

Q. Does the warden have the authority to compel you to give that information?

A. No.

Q. So you voluntarily gave it to the warden?

A. Yes.

Q. Was that a criminal investigation in which they were confessing to criminal conduct?

A. I had already got a declination of prosecution, so that was actually a compelled interview of those correctional officers.

Q. Does the warden have any authority over you whatsoever when you're inside of his institution?

A. No.

Q. Do you communicate regularly with -- when you're conducting a case, involving a Bureau of Prisons case, do you communicate regularly with the office of internal affairs?

A. No.

Q. It's only this one time that you can think of that you gave the information the warden was seeking to him.

A. Yes.

Q. Was that Warden Martinez?

A. I don't remember. There's been three wardens there in the past three years. I don't remember which warden it was.

Q. Does the office of internal affairs have any authority over you regarding how you conduct your investigation, or who you

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interview, or anything of that nature?

A. No.

Q. Does the warden of an institution -- does the warden of FCC Pollock tell you who you can and cannot interview?

A. No.

Q. Did the warden at FCC Pollock give you suggestions of who you could interview?

A. No.

Q. I don't think I have any further questions.

JUDGE PEARSON: Okay. Are you ready to start cross?

MS. RICCO: You know, if I could just have a couple of minutes, actually, that would be helpful. Thank you.

JUDGE PEARSON: All right, let's go off the record.

(Off the record.)

JUDGE PEARSON: Okay, so let's go back on the record.

All right. We're back on and we're going to have cross-examination now.

CROSS-EXAMINATION

Q. BY MS. RICCO: Hi, Ms. Barnes. You stated in your testimony that you communicated with a Mr. Joseph Ripka before going to the facility for the first interview in January with Ms. Nichols, right?

A. I communicated with someone else.

Q. Do you recall if you communicated with just Joseph Ripka, or just one person, or was it multiple individuals at the institution?

Barnes

A. It could have been multiple people.

Q. If you could do me a favor, and in the stack of documents in front of you turn to what's tabbed as No. 9.

A. Okay.

Q. If you could just browse over this document really quickly and then tell us what it is.

A. It's an e-mail that I sent to Bobby Crawford requesting the work schedule of Kimberly Nichols.

Q. And who is Bobby Crawford?

A. He is a lieutenant. He works in the SIS shop.

Q. And if you could also look at the next exhibit, which is marked as No. 10.

A. Okay.

Q. And also please just look this over and let us know what this is.

A. Another e-mail, from me to Bobby Crawford and Gordon Lewis who work in the SIS shop, about what day I would be there and the interviews I needed, people I needed to see.

Q. And these e-mails are dated a couple of weeks apart. Well, a little over a week apart. So No. 9 is dated on the 4th -- well, the 3rd and the 4th; and then No. 10 is dated on the 6th; and then another one from you on the 17th.

A. Yes.

Q. Can you also look at the exhibit marked No. 11. And this is also an e-mail from you to an individual working at SIS, Mr.

Lewis, arranging for the polygraph examination and asking them to

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inform her that one would be taking place.

A. Correct.

Q. If you could also turn to Exhibit 14.

A. Uh-huh.

Q. And this is also an e-mail from you to Gordon Lewis and someone else named Michael Morton.

A. Yes.

Q. Can you tell us who Michael Morton is?

A. I think at this time he was brand new. He was assigned to the SIS shop as well. I believe he took Bobby Crawford's place.

Q. And this is also an e-mail arranging, or letting them know that you would need to interview Kim Nichols and then two other individuals there that have been redacted; and this was sent on April 23rd?

A. Requesting their work schedules, yes.

Q. Okay. And then the next exhibit, No. 15, this is a response from Michael Morton dated April 23rd letting you know what days Ms. Nichols is going to be there, and also letting you know that he wasn't going to be present at the institution, when you were coming in?

A. Correct.

Q. And then you responded, looks like on the same day, asking if any of the other individuals from SIS were going to be present at the institution?

A. Yes.

Q. Is that an accurate summary of what this e-mail exchange is?

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A. Yes.

Q. So if I were to summarize these, I think it's five documents, would it be accurate to say that they represent your efforts as an OIG agent to coordinate the investigation of Kimberly Nichols with officials at FCC Pollock --

A. No.

Q. Can I finish the question? Coordinating the investigation of Kimberly Nichols with her supervisors at FCC Pollock or supervisors at FCC Pollock?

A. No.

Q. So how would you characterize these e-mails, then?

A. As I previously stated, I would coordinate with them to request the work schedules of the correctional officers, because I don't have access to that and to let them know when I would be there so they could escort me around the facility, because I am unauthorized to walk the facility unescorted.

Q. So you're saying that it was just logistical arrangements?

A. Correct.

Q. If you could turn your attention to Exhibit No. 13.

A. Yes.

Q. If you look at the bottom -- this is an e-mail chain so the top is obviously the most recent one sent. If you look at the bottom, if you could just read the e-mail over briefly, because I'll ask you questions about it.

JUDGE PEARSON: This is No. -- Exhibit 13?

MS. RICCO: Exhibit 13, yes. And I believe this is a 2-page

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document, so it's page 1. But there's nothing on the second page, actually.

JUDGE PEARSON: Right.

THE WITNESS: Okay.

Q. BY MS. RICCO: And if you'll look at the very last sentence of Mr. -- and just to note, this is from Michael Morton, who worked in SIS at the time. This e-mail states that Michael Morton told you he would give you a heads-up if Kimberly Nichols made any contact with him and the contents of the conversation.

That's more than logistics, correct, if we're talking about the contents of a conversation between Mr. Morton and SIS and Kim Nichols? The contents of the conversation does not deal with logistics of you coordinating your investigation efforts at the institution, correct?

A. This e-mail wasn't about logistics.

Q. Correct. So it was about something more than logistics.

A. Yes.

Q. So contents of the conversation, in your interpretation, means that he would give you whatever substance there was about a conversation with himself and Ms. Nichols.

A. Because they had a relationship.

Q. Nonetheless, it was about something more than simply arranging interviews, according to her work schedules.

A. Yes.

Q. So on at least one occasion, you received an update, if you want to call it that, or a notification from someone at the Bureau

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of Prisons FCC Pollock about substantive conversations that he had with Ms. Nichols?

A. Well, I don't think this is substantive. He told her he didn't want to talk to her, or didn't talk to her.

Q. I'm sorry, let me rephrase.

This e-mail was updating you on something that was not about her work schedule or arranging for you to interview with her.

A. It was not about her work schedule.

Q. You stated that during your meeting with Kim Nichols, she did not request union representation. During that meeting, I understand that you had a colleague -- Bruce, Douglas Bruce.

A. It's Douglas Bruce.

Q. Did you or your colleague mention anything to Ms. Nichols about how a union representative does not have attorney/client privilege?

A. No.

Q. Is it the practice for OIG agents to attempt to dissuade interviewees from insisting on their union representation?

A. No. If they ask, they get one.

Q. You're required to provide union reps to bargaining unit employees if they request one, correct?

A. If they request one, we allow them to get one.

Q. And if they don't -- I'm sorry -- if they do request a union representative and either you -- let's say not even you. An OIG agent gets a request for representation and denies that request. Could that agent get in trouble with their supervisor at OIG if it

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later comes to light that a bargaining unit employee requested representation and was denied one by an OIG agent?

A. I've never denied one, so I wouldn't know.

Q. But I'm asking hypothetically, as an agent you're aware of the things you're supposed to do and not supposed to do. So if an agent were to receive a request for representation and the agent were to deny that request, and it later came to light that that occurred, could that agent possibly get in trouble for doing that?

A. I've never denied one; I don't know.

JUDGE PEARSON: That's not what she's asking you.

MS. RICCO: No.

THE WITNESS: Our policy is --

JUDGE PEARSON: You understand your duties and the responsibilities --

THE WITNESS: Yes, our policy is to allow the request, if they request one. So based off what you said, you would be against policy if you denied it.

Q. BY MS. RICCO: And you could get disciplined for something like that potentially.

A. Potentially.

Q. You also stated that on the very first interview with Ms. Nichols, the one on January 24th, Mr. Ripka escorted Ms. Nichols into the room and then shut the door and left.

A. Uh-huh.

Q. You then stated that you recall Ms. Nichols saying, "What's going on?" Specifically, you said that you know it occurred after

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the door was shut.

A. Because she was looking at me.

Q. Okay. You also said that after that meeting, you could not recall whether she made any corrections or changes to her affidavit.

A. I don't recall if she made any corrections while we were sitting and going over the affidavit. I don't remember.

Q. So you can recall whether a door was closed when someone says, "What's going on?" but you can't recall whether or not she physically made changes to a document that you prepared, then had to have her sign?

A. I've done 50 to 100 interviews and affidavits since that time. Some people make changes; some people don't. So I can't recall. But I do recall that she was upset, and I recall her -- I recall what she looks like, and I can recall that in my mind of her standing there in front of the door, behind her.

Q. Right. And I understand you've done a lot of affidavits since then. I just want to clarify that you're saying you recall whether a door was closed when one of hundreds of employees you may have interviewed in the last year-and-a-half; you can recall whether the door was closed but you can't recall whether she made corrections to a written document that you handed to her?

A. Correct.

JUDGE PEARSON: Well, if Ms. Nichols had made a correction --

THE WITNESS: Yes?

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JUDGE PEARSON: -- would your normal procedure be to have her mark the changes in pen and initial them or would you retype the whole document?

THE WITNESS: No, it's up on our laptop that we have in front of us, so if they say, Oh, you misspelled a word, we'll just change it right there and print it. Or sometimes they'll read it and they'll take a pen and write on there what they want to change, and we'll make the changes and reprint it.

JUDGE PEARSON: But the fact that the statement that we have in the record here --

THE WITNESS: Yes, sir.

JUDGE PEARSON: -- from, signed by Ms. Nichols, the fact that it doesn't have any changes marked in pen would not be indicative of whether you made changes because they could have been made by the computer.

THE WITNESS: Correct.

MS. RICCO: I'm sorry, are you done? Can I keep going?

JUDGE PEARSON: I'm sorry?

MS. RICCO: Can I keep going? I didn't know if you had any follow-up questions.

JUDGE PEARSON: Please do. No, that's it.

MS. RICCO: Okay.

Q. BY MS. RICCO: I can't recall -- I'm sorry -- the exact words that you said, so -- I'm going to try.

Mr. Bauch had asked you whether there would be occasion for you to update the warden after an interview with -- an interview

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subject at his institution. And you said typically not, but there might be cases such as safety issues that would require you to do so. And in that explanation you stated that accusations of sexual assault might be that type of circumstance where you would feel compelled to go to the warden and update them, because it's a safety issue for that particular inmate, or other inmates. And you stated that sexual assault might be one of those situations where you would update the warden.

My understanding is that your interview of Ms. Nichols included allegations of sexual assault against an inmate, correct?

A. The inmate was also in the special housing unit. But, yes.

Q. So even though this particular interview with Ms. Nichols involved allegations of sexual assault, that didn't -- you didn't think that that was a reason to go talk to the warden, even though you stated that typically that would be a type of situation where you would?

A. I don't recall if I talked to the warden about this specific case, but I do recall the inmate was already locked in the special housing unit and, therefore, Ms. Nichols and the inmate could not have any physical contact.

Q. So you don't remember whether or not you talked to the warden after this January 24th interview?

A. I don't believe I did, but I can't tell you a hundred percent who I talked to right after that; I was there every other week.

MS. RICCO: I'm sorry, Your Honor, I just need one second.

JUDGE PEARSON: Not a problem. Go ahead.

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Q. BY MS. RICCO: Can you recall how long the January 24th interview with Ms. Nichols lasted?

A. Approximately three hours.

Q. Three hours.

MS. RICCO: I think that's all I have, for now.

JUDGE PEARSON: Okay. Let me see here.

Do you recall whether you or your office had any contact with Bureau of Prisons Office of Internal Affairs about this case?

THE WITNESS: I did not have any contact with OIA about this case. I think I've spoken to OIA less than two-- maybe two or three times in the past three years.

JUDGE PEARSON: Okay. And not about this case, though.

THE WITNESS: No, sir.

JUDGE PEARSON: So Lieutenant Ripka, Kenneth Morton and any of the other people that you had contact with were all in the SIS shop; is that right?

THE WITNESS: Yes, sir.

JUDGE PEARSON: Do you have any familiarity with when internal affairs gets involved in these kinds of investigations and when SIS does it?

THE WITNESS: My understanding is if my boss makes the determination that we're not going to open criminal cases on the matter, then it gets referred back to OIA. I don't know what the decision-making process is for it to go to SIS. I'm not involved in that, or have no knowledge of that.

JUDGE PEARSON: Okay. Now if -- at the end of your

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investigation, not specifically the Nichols case but in cases that are referred to you involving your prison employees, if there's an allegation of criminal misconduct by the Bureau of Prisons employee, does your office, either you or your supervisor, analyze or make an evaluation whether there's evidence of criminal action?

THE WITNESS: I have only been assigned criminal investigations on BOP employees. At some point it's declined by the U.S. Attorney's Office and it may turn in strictly administrative issues that we're looking at, at that point. But I have never had strictly an administrative case against a BOP employee. Every case I've been assigned, has always started out criminal, involved criminal allegations.

JUDGE PEARSON: Right, but my question is, at the end of your investigation --

THE WITNESS: Yes, at the end.

JUDGE PEARSON: -- you have to make a summary and analysis of the evidence that has been obtained, and either you or your supervisor or the two of you together make a -- I don't know whether conclusion or recommendation or analysis is the right word to use, but some sort of an analysis that the evidence doesn't show any criminal conduct or appears to show evidence of criminal conduct. You have to make some sort of analysis, don't you?

THE WITNESS: Yes, sir. We put a statement -- if the allegation involved bribery, we would make a statement that the OIG did not find sufficient evidence to indicate that Correctional Officer X committed bribery.

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JUDGE PEARSON: What if you determined that the evidence did show at least significant evidence of bribery?

THE WITNESS: It would be a similar sentence. The OIG did find sufficient evidence that Correctional Officer X accepted \$20,000 in bribe payments for smuggling, or whatever the case was, or what we could prove with documents.

JUDGE PEARSON: And that analysis would then go to the U.S. Attorney, and they would make a determination whether they were going to prosecute or not?

THE WITNESS: Our report is done after they get prosecuted. So what happens, along the way as we find criminal evidence or we don't find criminal evidence, we coordinate with the AUSA and will brief them on, This is what we have so far, are you willing to accept it for prosecution? And if they say yes, well, then we'll type a prosecution memorandum with our supporting evidence and give it to them, and we'll get ready for indictment or an arrest or an operation, of that sort. But the actual report of investigation isn't completed until we are completely done and after they're sentenced and everything.

JUDGE PEARSON: And I know, I believe you testified before that the IG's office doesn't make any kind of recommendation to the warden about disciplinary action; that's entirely for the warden to evaluate. But if, after consultation with the U.S. Attorney's office and after you've completed your investigation, if there's a determination not to prosecute the employee but there is more than a significant or reasonable amount of evidence

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suggesting that the employee may have committed violations of BOP policy, how would you pass on that conclusion to the prison?

THE WITNESS: In a similar manner. Our reports are the same. As far as the OIG found sufficient evidence that they failed their security procedures by allowing Correctional Officer X to bring in his cell phone, maybe more of an administrative-type issue. We put that in our report and we send it to the BOP, and that's it.

JUDGE PEARSON: Okay. And would you usually cite in your report what the policy or program violations are?

THE WITNESS: Sometimes we do.

JUDGE PEARSON: And at the end of your investigation in the Nichols case, did your report back to internal affairs and to the prison refer in any way to any kind of policy violations by Ms. Nichols?

THE WITNESS: Not that I can recall. I can look at it real quick if you would like me to.

JUDGE PEARSON: Do we have it in here?

THE WITNESS: Yes, sir, but not --

JUDGE PEARSON: Show me where it is.

THE WITNESS: Not that I recall. It was just sent to the Bureau of Prisons for review for their information because we couldn't support any criminal allegations.

JUDGE PEARSON: Would this be at the very front --

THE WITNESS: This is at page 16, sir.

JUDGE PEARSON: Exhibit 16, the synopsis at the front.

THE WITNESS: Yes, sir, because this is an abbreviated

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report, and so we just do a synopsis. So on that second page, we put: The OIG has completed its investigation and is providing the report for the Bureau of Prisons for its review.

On that first page, that second paragraph shows that we did not develop sufficient evidence of the allegations that we were investigating.

So in this particular case, we let them know that we did not develop sufficient evidence of the criminal allegations that we were looking into. And so this report was for their review, because I did not see or put in my report any Bureau of Prisons administrative violation, so none of that was mentioned.

JUDGE PEARSON: So I'm not familiar enough with BOP regulations and program policies for correctional officers and counselors. But looking at the second and third paragraphs of the synopsis, it doesn't refer to conduct by Nichols, which would represent policy violations or misconduct on her part?

THE WITNESS: Correct.

JUDGE PEARSON: Just a second now.

THE WITNESS: And she denied the circumventing their BOP procedures for mailing letters to the inmate. That was really the only other thing I think we discussed in here.

JUDGE PEARSON: Now, the interview that you had with Ms. Nichols on January 24th, the first one, Ms. Ricco asked you about this to some degree before. Was there any kind of discussion between you and Ms. Nichols about a confidential relationship that she did or didn't have with the Union or any kind of

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attorney/client relationship that might be involved or not involved?

THE WITNESS: No. During that interview, as in her affidavit, we discussed the allegations, and I recall her crying and a lot of denials; but at no time did she discuss a confidentiality or union member.

JUDGE PEARSON: You didn't tell her that the interview was confidential and that the Union didn't have a confidential relationship with her?

THE WITNESS: No, sir.

JUDGE PEARSON: All right. I don't think I have any further questions.

Do you want to follow up, Mr. Bauch?

MR. BAUCH: Yes, Your Honor.

REDIRECT EXAMINATION

Q. BY MR. BAUCH: Ms. Barnes, Ms. Ricco asked you questions on Exhibit 13, so if you would turn to Exhibit 13 once again in the packet.

A. Yes.

Q. Mr. Morton was an SIS lieutenant during the time period you were conducting the Nichols investigation; is that correct?

A. He came on board at some point while the investigation was ongoing.

Q. And how is it that -- did you have a conversation with Mr. Morton regarding Ms. Nichols --

A. Yes.

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Q. -- during your investigation?

A. Yes.

Q. How is it you came to the conclusion that you needed to speak to Mr. Morton about Ms. Nichols?

A. After analyzing her cell phone, there was evidence of a relationship. I don't recall if it was text messages that I reviewed or if it was actual phone calls, around the date of her interview, the January interview. And I asked him about that, if he was -- if she had disclosed anything to him about the allegations. And he said she just came to his office crying, and they were kind of in a, not a romantic relationship, but a friendship that would possibly be romantic, but due to this investigation he didn't want to talk to her anymore. And then he sent me this e-mail on his own accord.

Q. Would it be a conflict of interest for a person in a special investigative officer in the Bureau of Prisons to have a relationship with the subject of an ongoing investigation?

A. I would think it would be.

MR. BAUCH: I think that's all my questions, Judge.

JUDGE PEARSON: Do you want to follow up?

MS. RICCO: I do.

RECROSS-EXAMINATION

Q. BY MS. RICCO: Did you ever officially interview Mr. Morton as part of your investigation into Ms. Nichols?

A. Yes.

Q. Do you recall when that happened?

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A. No.

Q. You don't remember at all.

A. I don't remember the day.

Q. Do you have any idea round about what month it was? The first interview with Ms. Nichols was January 24th.

A. I don't recall exactly when he got there. Sometime between January and March. I couldn't tell you a day. It was after I analyzed her cell phone; I knew that. And she gave that to me on January 24th. It would be February or March.

Q. Is it typical for people who are witnesses that are providing information via interviews for your investigations to update you pretty, what I would characterize as casually via e-mail? Is that typical or was this because you already knew Mr. Morton and he was part of the SIS?

A. It depends; some witnesses are high maintenance. And they feel like they have to tell you every time they see a subject in the hallway, and they feel like they can't use the phone so they e-mail you. I get a lot of e-mails from various agencies, various individuals who have various roles in cases. So it depends.

Q. Did you request that Mr. Morton keep you updated this way, or provide you this specific update here?

A. No, he volunteered that on his own. When I spoke to him about if she had maybe confessed any of these allegations to him, which he said she did not, he said, Well, I'll let you all know if, because he didn't want to have any contact with her anymore, because for whatever reason he decided, I'll let you know if she

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tells me anything.

Q. And he was an SIS lieutenant during -- when you had these conversations with him?

A. He was.

MS. RICCO: That's all I have for recross.

JUDGE PEARSON: Okay. Thanks so much.

You're excused then.

(Witness excused.)